

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COMPRESSOR ENGINEERING
CORPORATION, a Michigan corporation,
individually and as the representative of a
class of similarly situated persons,

Plaintiff,

v.

CHARLES J. THOMAS, JR.,

Defendant.

Case No. 2:10-cv-10059-PDB-VMM

Hon. Paul D. Borman

Mag. R. Steven Whalen

JASON J. THOMPSON (P47184)
DANIELLE C. SCHOENY (P66053)
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NOTICE OF HEARING

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that Defendant Charles J. Thomas, Jr.'s Motion to Reassign Case to Judge Cox Who is Presiding Over Companion Cases will be brought on for hearing at a date and time to be set by the Court.

Respectfully Submitted,

CONKLIN BENHAM, P.C.

BY: /S/Denise L. Mitcham (P33208)
Attorney for Defendant Charles J. Thomas Jr.
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Dated: October 10, 2013

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**DEFENDANT CHARLES J. THOMAS, JR.'S MOTION TO REASSIGN CASE TO JUDGE
COX WHO IS PRESIDING OVER COMPANION CASES**

NOW COMES, pursuant to Local Rule 83.11(b), Defendant, Charles Thomas, Jr., by and through their counsel Conklin Benham, PC, and hereby move to reassign this case to the Honorable Judge Sean Cox, who is presiding over three Companion Cases of the instant case, for the following reasons:

1. As the Court is aware, this matter was brought by Plaintiff, Compressor Engineering Corporation, a Michigan corporation, alleging violation(s) of the Telephone Consumers Protection Act, 47 U.S.C. § 227 (“TCPA”).
2. There are currently three additional TCPA cases pending before District Judge Sean F. Cox that assert nearly identical claims, are brought by the same Plaintiff’s counsel and one of those cases is brought by the identical named plaintiff. The three cases are the following:
 - a. *Compressor Engineering Corp. v. Manufacturers Financial Corp., et al.* (case no. 09-14444)—Complaint filed: November 13, 2009;
 - b. *APB Associates, Inc. v. Bronco’s Saloon, Inc., et al.* (case no. 09-14959)—Complaint filed: December 22, 2009; and
 - c. *Machesney v. Lar-Bev of Howell, Inc., et al.*, (case no. 10-10085)—Complaint filed: January 11, 2010.
3. Each of these four (4) cases involves a woman named Caroline Abraham who ran a business called “Business-to-Business Solutions” and allegedly sent facsimile advertisements on behalf of the named Defendants. Plaintiff’s counsel came across the information regarding Business-to-Business Solutions and Ms. Abraham while they were investigating four other class actions in Illinois.

4. Plaintiff's counsel has used the information obtained from Business-to-Business Solutions and Ms. Abraham to solicit and/or obtain additional clients to file these TCPA class actions around the country in various federal courts.
5. The Complaint before this Honorable Court, brought by one of the same plaintiffs Compressor Engineering Corp. and by the identical plaintiff's counsel, was filed on January 6, 2010. And despite Plaintiff's counsel being aware of the other three TCPA companion cases involving nearly identical claims, this case was not assigned to Judge Cox, the judge presiding over the earlier case(s), but rather was assigned to your Honor, Judge Borman.
6. Local Rule 83.11(b)(7) provides that a "companion case" is a case where it appears that:
 - (i) Substantially similar evidence will be offered at trial; or
 - (ii) The same or related parties are present and the cases arise out of the same transaction or occurrence.
7. The above three earlier TCPA cases qualify as "companion cases" pursuant to the definition set forth in LR 83.11(b)(7). The cases arise out of the same business "transactions", involve similar parties and witnesses, and involved substantially similar evidence that is coming from one source (Business-to-Business Solutions and Caroline Abraham's business records).
8. As such, Plaintiff's counsel was required to notify the Clerk of Court regarding the pendency of the earlier companion cases and request that the current case be assigned to Judge Cox as well by accurately filling out the civil case cover sheet at the time the Complaint was filed. Specifically, LR 83.11(b)(7)(C) provides:
 - (C) Counsel or a party without counsel must bring companion cases to the court's attention by responding to the questions on the civil case cover sheet or in the electronic filing system.

9. In the event it becomes apparent to both Judges that they have companion cases, subsection (D) provides guidance as follows:

(D) When it becomes apparent to the Judge to whom a case is assigned and to a Judge having an earlier case number that two cases are companion cases, upon consent of the Judge having the earlier case number, the Judge shall sign an order reassigning the case to the Judge having the earlier case number.

10. To promote judicial efficiency, Defendant respectfully requests that this matter be reassigned to Judge Cox based on the fact that he is currently presiding over three (3) companion cases, two (2) of the cases have earlier case numbers, and Judge Cox is already very familiar with some of the issues that will be presented in the current case.
11. The language of the above referenced Local Court Rule (83.11), it not discretionary; it is mandatory. Therefore, the Local Court Rules of this Court require that this case be reassigned to Judge Cox.
12. Plaintiff's counsel has been requested to concur with this motion and his concurrence in the relief requested has been denied, thus necessitating the filing of the motion.

WHEREFORE, for all of the above stated reasons, Defendant Charles J. Thomas, Jr., respectfully requests that his Motion to Reassign this case to the Honorable Judge Sean F. Cox, who is presiding over three Companion Cases, be granted.

Respectfully Submitted,

CONKLIN BENHAM, P.C.

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**DEFENDANT CHARLES J. THOMAS, JR.'S BRIEF IN SUPPORT OF HIS MOTION TO
REASSIGN CASE TO JUDGE COX WHO IS PRESIDING OVER COMPANION CASES**

NOW COMES, pursuant to Local Rule 83.11(b), Defendant, Charles Thomas, Jr., by and through their counsel Conklin Benham, PC, and hereby move to reassign this case to the Honorable Judge Sean Cox, who is presiding over three Companion Cases of the instant case, for the following reasons:

Defendant Thomas relies upon the argument and legal authority set forth in the above referenced Motion, together with the attached supporting documents in support of the relief requested.

WHEREFORE, for all of the above stated reasons, Defendant Charles J. Thomas, Jr., respectfully requests that his Motion to Reassign this case to the Honorable Judge Sean F. Cox, who is presiding over three Companion Cases, be granted.

Respectfully Submitted,

CONKLIN BENHAM, P.C.

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PROOF OF SERVICE

La'Tangalar Dugan, being first duly sworn, deposes and states on October 10, 2013, she served a copy of **Notice of Hearing, Defendant Charles J. Thomas, Jr.'s Motion to Reassign Case to Judge Cox Who is Presiding Over Companion Cases, Defendant Charles J. Thomas, Jr.'s Brief in Support of His Motion to Reassign Case to Judge Cox Who is Presiding Over Companion Cases** and this **Proof of Service** by CM/ECF mail to the following person(s):

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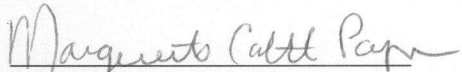
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La'Tangalar Dugan

Subscribed and sworn to before me
on October 10, 2013.


Marguerite Colette Payne
Notary Public, Macomb County
Acting in Oakland County
My Commission Expires: 08-30-18.